



The University of Western Ontario, London, Canada

Dean of Law

ONTARIO	
DEPARTMENT OF LABOUR	
SEP 10 1971	
HUMAN RIGHTS COMMISSION	
FILE CODE	

September 8, 1971

Dr. Daniel G. Hill,  
Director,  
The Ontario Human Rights Commission,  
12th Floor,  
400 University Ave.,  
Toronto, Ontario.

Re: Board of Inquiry in the matter of  
Miss Vivienne Brown - Edward Blake

Dear Dr. Hill:

I take the liberty of reporting to you by letter concerning the above matter, rather than a formal report, because of the withdrawal of the complaint by counsel acting on behalf of the Ontario Human Rights Commission. In the circumstances, of course, there can be no recommendation from me to the Commission as contemplated by the Code.

As you may recall, I convened the hearing in this matter on January 28th, 1971, and on that occasion proceeded to hear, in the absence of the respondent, the evidence of alleged discrimination given by Miss Brown and by several witnesses testifying on her behalf. I heard such evidence in the absence of Mr. Blake because I was satisfied that the latter was deliberately seeking to avoid appearing before the Board. The evidence adduced by Miss Brown and her witnesses was, in the absence of any challenge, quite overwhelming and completely satisfied me that unless a strong rebuttal could be presented that a flagrant case of discrimination by reason of race and colour had been made out against the respondent. At the conclusion of the complainant's case the proceedings were adjourned to a later date to afford Mr. Blake one last opportunity to appear before the Board in response to summons which had been issued requiring him to do so. Because of Mr. Blake's previous and continuing recalcitrance, which was thoroughly documented, I endorsed the application of counsel for the Commission that such further subpoena to attend might be enforced by a



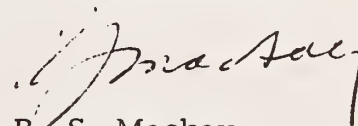
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warrant of arrest if necessary. Although a Board Chairman is empowered to do so it is understandably an extreme step and I did so with considerable reluctance and only because I was satisfied that such an attitude on the part of Mr. Blake and others similarly inclined could only frustrate and nullify the work of boards of inquiry and circumvent the Code itself. Instances of invoking the power to arrest to enforce the process of the Board will, I trust, be very rare indeed and should only be resorted to in cases of a systematic abuse of the process by a respondent.

In the meantime, of course, the Supreme Court of Canada decided the case of Bell v. McKay and on the basis of that decision, and of the facts previously adduced in the Brown - Blake hearing on January 28th, it was quite clear that I lacked jurisdiction to continue the Inquiry and dispose of the hearing on its merits. Counsel for the Commission quite properly withdrew the case. It would be bootless on my part to comment on the merits of the Supreme Court decision, although privately I find little to support it, because it quite clearly does have the effect of depriving boards of inquiry of jurisdiction to entertain cases involving the type of accommodation sought by Miss Brown. Following my dismissal of the complaint for lack of jurisdiction, as defined by the Supreme Court of Canada, I expressed my sympathy to Miss Brown and pointed out some of the ironies which result from the interpretation placed by the Supreme Court on the meaning of "self contained unit". I am not sorry that I made these comments, if only because Miss Brown who went through so much deserved so much better than a peremptory dismissal of her (on the evidence submitted) very valid complaint. I just wish that these remarks had not been so mutilated by the press.

I am also taking the liberty of attaching a statement of fees and disbursements in connection with this hearing.

Yours sincerely,



R. S. Mackay  
Dean

RSM/mm



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